

EXHIBIT B

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6 Attorneys for Defendants
NBTY, INC., NATURE'S BOUNTY,
7 INC., REXALL SUNDOWN, INC., and
COSTCO WHOLESALE CORPORATION
8

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 PAIGE PETKEVICIUS, on Behalf of
Herself and All Others Similarly
12 Situated,

13 Plaintiff,

14
15 v.

16 NBTY, INC.; NATURE'S BOUNTY,
17 INC., REXALL SUNDOWN, INC.; and
DOES 1-100,

18
19 Defendants.

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21 TATIANA KOROLSHTEYN, on behalf
of herself and all others similarly
22 situated,

23 Plaintiff,

24 v.

25 COSTCO WHOLESALE
CORPORATION and NBTY, INC.,

26 Defendants.
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CASE NO.: 3:14-CV-02616-CAB-RBB
CASE NO.: 3:15-CV-00709-CAB-RBB

**NOTICE OF DESIGNATION OF
EXPERT WITNESS FOR
PURPOSES OF SUMMARY
JUDGMENT AND TRIAL**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to the Court's Order of June 24, 2016 [ECF No. 75] in *Petkevicius v. NBTY, et al.*, and the Court's Order of June 24, 2016 [ECF No. 87] in *Korolshteyn v. Costco Wholesale Corporation, et al.*, Defendants NBTY, Inc., Nature's Bounty, Inc., Rexall Sundown, Inc., and Costco Wholesale Corporation hereby identify the following person who may be used at summary judgment or trial to present evidence pursuant to Rules 702, 703, or 705 of the Federal Rules of Evidence:

Dr. Stephan Ogenstad

Statogen Consulting

3828 Quarry Road

Zebulon, NC 27597

Tel.: (919) 761-8840

Rate for deposition and trial testimony: \$650/hour

Summary of testimony expert is expected to provide: Dr. Ogenstad is expected to provide testimony regarding the following topics: (i) studies identified by Defendants as having been relied upon to substantiate the claims on the product labels, including the statistical measurements contained therein; (ii) studies identified by Dr. Edward Rosick as indicative of the efficacy of ginkgo biloba, including the statistical measurements contained therein; (iii) studies identified by Plaintiffs and their expert witnesses, including the statistical measurements contained therein; (iv) biostatistics in general and the use of biostatistics in clinical trials; and (v) other studies regarding ginkgo biloba which he may cite based on his own research.

Defendants do not believe that any further designation of Dr. Rosick is required, but, out of an abundance of caution, Defendants hereby note that Dr. Edward Rosick may also be used at summary judgment or trial to present evidence

1 pursuant to Rules 702, 703, or 705 of the Federal Rules of Evidence. His
 2 information is as follows:

3 Dr. Edward Rosick

4 Michigan State University

5 209-B West Fee Hall

6 E. Lansing, MI 48824

7 Tel.: (517) 355-0214

8 Rate for deposition and trial testimony: \$350/hour

9 Summary of testimony expected to be provided: Dr. Rosick is expected to
 10 testify as to the efficacy of Ginkgo Biloba, in accordance with the opinions set
 11 forth in his Expert Report, including as revised for correction on December 27,
 12 2016, and as discussed at his deposition on December 16, 2016.

13 Lastly, Defendants do not believe that they need to designate Dr. Susan
 14 Mitmesser as an expert witness as Defendants do not intend to offer her as an
 15 expert witness but, rather, as a lay witness who can testify as to Defendants'
 16 substantiation of the claims on the product labels. Nevertheless, out of an
 17 abundance of caution and in light of Plaintiffs' Motion to Strike Dr. Mitmesser's
 18 Declaration in Opposition to Plaintiffs' Motions for Class Certification—and
 19 without conceding that Motion has any merit (because it doesn't)—Defendants
 20 identify Dr. Mitmesser as someone who will provide testimony in connection with
 21 summary judgment and trial, if necessary. Her information is below:

22 Dr. Susan Mitmesser

23 The Nature's Bounty Co.

24 2100 Smithtown Avenue

25 Ronkonkoma, NY 11779

26 Tel.: (631) 567-9500

27 Rate for deposition and trial testimony: Not applicable
 28

1 Summary of testimony: Dr. Mitmesser will testify as to the bases for
2 Defendants' substantiation of the claims made on the product labels.

3 Dated: January 10, 2017

WILLENKEN WILSON LOH &
DELGADO LLP

4
5 By: s/ William A. Delgado

6 William A. Delgado

7 Attorneys for Defendants

8 NBTY, INC., NATURE'S BOUNTY,

INC., REXALL SUNDOWN, INC. and

9 COSTCO WHOLESALE

10 CORPORATION
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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 707 Wilshire Boulevard, Suite 3850, Los Angeles, CA 90017.

On the date below, I served the foregoing document(s), described as **NOTICE OF DESIGNATION OF EXPERT WITNESS FOR PURPOSES OF SUMMARY JUDGMENT AND TRIAL** on each of the interested parties in this action.

☒ By placing ☐ the original ☒ true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LISTS

☒ **(BY U.S. MAIL)** I placed such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(VIA OVERNIGHT DELIVERY)** I deposited in a box or other facility maintained by Federal Express, an express carrier service, or delivered to a courier or driver authorized by said express carrier service to receive documents, a true copy of the foregoing document, in an envelope designated by said express service carrier, with delivery fees paid or provided for.

☒ **(VIA ELECTRONIC SERVICE)** The document was served via electronic transfer upon the parties listed using their e-mail addresses as shown in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on **January 10, 2017**, at Los Angeles, California.

HELEN HSIAO

(Type or Print Name)



Signature

SERVICE LIST

Paige Petkevicius v. NBTY, Inc., et al.
Case No.: 3:14-cv-02616-CAB-RBB

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SERVICE LIST

Tatiana Korolshteyn v. Costco Wholesale Corporation
Case No. : 3:15-cv-0709-CAB-RBB

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